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Can the EU Presidency make its mark on interstate bargains?

The Italian and Irish Presidencies of the 2003–04 IGC

Ben Crum

ABSTRACT According to liberal intergovernmentalism the outcome of EU negotiations is determined by the constellation of member state interests without needing any formal leadership. This article reviews this ‘self-clearing thesis’ in the context of the 2003–04 IGC. It further examines what impact the European Convention, which prepared a comprehensive draft Constitutional Treaty, has had on these negotiations. Three roles of the Italian and the Irish Presidency leading the 2003–04 IGC are analysed: managing the scope of the negotiations’ agenda, brokering efficient deals and promoting specific interests. Little evidence is found that the Presidencies really made a substantial difference in brokering the eventual deals or in promoting their own interests. However, the presence of the Convention’s draft allowed the Presidencies to adopt an agenda management strategy that changed the nature of the negotiations and the power configuration of interests and thus radically departed from those normally applying at IGCs.

KEY WORDS EU Constitutional Treaty; EU Presidency; Intergovernmental Conference; liberal intergovernmentalism; negotiation theory.

INTRODUCTION

This article examines the agreement between the European Union (EU) member governments on the ‘Treaty establishing a Constitution for Europe’ and, in particular, whether the Italian and Irish Presidencies leading the 2003–04 Intergovernmental Conference (IGC) have in any way made a substantial difference to this agreement. The theoretical backdrop of this examination is what I propose to call the ‘self-clearing thesis’, which is a core component of Andrew Moravcsik’s ‘liberal intergovernmentalist’ theory of European integration (Moravcsik 1998, 1999; Moravcsik and Nicolaïdis 1999). According to Moravcsik (1999: 298), ‘[d]ecentralized bargaining is “naturally” efficient’. In his view ‘demand for cooperation tends to create its own supply. Institutions, procedures, and norms, as well as entrepreneurs are not required’ (Moravcsik 1999: 301). Under these conditions, the role of actors who can claim a distinctive position in the negotiation process – the

Commission but, by implication, also the EU Presidency – is at most that of a ‘midwife’, ensuring that the ‘outcome foretold’ is delivered as speedily and efficiently as possible; they are, however, unlikely to leave their ‘parental’ mark on the substance of the outcome.

The self-clearing thesis is by no means uncontested. Recent years have witnessed a growing number of studies of the role of the EU Presidency in steering EU negotiations. Most notably, Jonas Tallberg has argued that the French Presidency successfully protected its own interests in the course of the 2000 IGC. He concludes: ‘despite negotiation conditions that worked against the capacity of the Presidency to engineer agreement and shape distributional outcomes, the French government managed to strike an accord that simultaneously secured key national interests’ (Tallberg 2006b: 36). This position challenges the self-clearing thesis in two regards. It suggests, first, that entrepreneurship by the EU Presidency is essential in brokering efficient bargaining outcomes and, second, that the Presidency can promote its own interests by steering the distributive effects of the outcomes.

Beyond brokering efficient outcomes and appropriating distributive gains, the 2003–04 IGC highlights a third role for the Presidency, namely the management of the scope of the negotiations. Notably, the 2003–04 IGC was distinctive compared to earlier IGCs because it was preceded by a Convention that prepared a complete legal text for the IGC and ensured that its agenda was already extensively visited. While previous IGCs had been preceded by preparation groups to survey the issues involved, these never presented complete legal texts ready to be adopted by the member states. As a consequence, it became an important task for the Presidency to define the status of the Convention’s draft in the IGC and to determine the scope of the issues open for (re-)negotiation.

The article thus pursues two questions: Does the 2003–04 IGC confirm the self-clearing thesis or have the Italian and Irish Presidencies made a difference? And what has been the impact of the European Convention and its draft Constitutional Treaty on the negotiations? The next section reviews the underpinnings of the self-clearing thesis in the liberal intergovernmentalist account of inter-state bargaining, contrasting it with recent accounts that have highlighted the procedural powers of the EU Presidency. The subsequent empirical analysis of the 2003–04 IGC is then organized around the three roles of the Presidency in managing the negotiations’ agenda, brokering deals acceptable to all and promoting (self-)interests.

1. INTER-STATE BARGAINING AND THE ROLE OF THE EU PRESIDENCY

Andrew Moravcsik’s self-clearing account of inter-state bargaining is part of his liberal intergovernmentalist explanation of European integration (Moravcsik 1998, 1999; Moravcsik and Nicolaïdis 1999). According to this account the (efficient) outcome of EU negotiations follows logically from the given

preferences of the negotiating state actors: '[d]ecentralized bargaining is "naturally" efficient' (Moravcsik 1999: 298). Crucial to this self-clearing theory of inter-state bargaining is the claim that negotiation parties face few impediments in identifying mutual gains as information is relatively cheap. Certainly in the context of EU negotiations, 'information and ideas are widely and evenly distributed' among the actors involved (Moravcsik 1998: 55; cf. 1999: 301). What is more, if certain relevant pieces of information are less readily available, actors who take a particular interest in a successful outcome of the negotiations will be willing to make the effort to disclose them: 'The most interested national governments and societal groups can act as effective policy entrepreneurs' (Moravcsik 1998: 55, 480).

The self-clearing thesis thus suggests that the outcome of international negotiations is fully determined by the given constellation of state interests. Efficiency is secured because all agreements that are mutually advantageous will be identified. Furthermore, in this account also the distribution of the benefits is fully determined as it suggests that, with all states possessing the right of veto, the number of concessions that states are able to extort from each other is proportionate to the extent to which they are willing to acquiesce in the existing situation (Moravcsik 1998: 62). Hence, the successful conclusion of the negotiations does not require formal leaders, actors vested with a particular role or powers that allow them to drive the negotiation process forward where otherwise the negotiation parties would risk getting stalled or subscribing to sub-optimal solutions. Most pointedly, with regard to the role of the European Commission, Moravcsik (1999: 269–70) submits: 'supranational intervention, far from being a necessary condition for efficient interstate negotiation in the EC [European Community], is generally late, redundant, futile, and sometimes even counterproductive.'

While Moravcsik's analysis is primarily targeted against the distinctive role attributed to supranational actors like the European Commission in international negotiations, his analysis has a direct bearing upon the role of the EU Presidency. While the member state holding the Presidency may develop into a policy entrepreneur just like any other state taking a distinctive interest in the negotiations, the role of the Presidency and the responsibilities associated with it would not attribute this state with distinctive additional powers to steer the negotiations towards one outcome rather than another. The intergovernmentalist argument may grant that the Presidency may tamper with the procedure. Still, if negotiations are fully transparent, then in principle whatever efforts the Presidency undertakes are unlikely to unveil any options that could not have been logically foreseen from the start. In short, even if the process may vary, the outcome will remain given as it is supposed to be the rational resultant of the given preferences of the actors involved.

In contrast to the intergovernmentalist's scepticism, various authors have in recent years come to analyse the means by, and the conditions under, which the EU Presidency can drive EU negotiations forward (Tallberg 2006a; Metcalfe 1998; Elgström 2003; Beach 2005). They have highlighted the specific resources

of the EU Presidency that distinguish it from the other member states. First, the claim is that the Presidency has access to information that other states do not have (Tallberg 2006a: 29f.). Its distinctive role gives the Presidency the credibility to call upon member states to account for their positions and to do so, if needed, in a bilateral exchange that can be kept confidential. Related to this is the use the Presidency can make of the Council secretariat that acts as the Council's memory as it systematically accumulates inside knowledge of member state positions while the Presidency rotates (Beach 2005). A second set of resources is constituted by the Presidency's procedural controls (Tallberg 2006a: 31). In particular four controls can be identified. First, the Presidency can steer the procedure by setting its timeframe through the determination of deadlines for decisions and for intermediate milestones. Then, it determines the frequency of meetings, at which level they are held and what character they take. Third, the Presidency is in charge of the agendas of all Council meetings. Finally, the Presidency takes the lead in managing the 'zone of possible agreement' (Raiffa 1982; Metcalfe, 1998: 423), as it is in many cases (apart from those, mostly legislative, dossiers that are prepared by the Commission) responsible for the drafting of negotiation texts.

In the literature on negotiations, a distinction is commonly made between two dimensions along which the Presidency can affect negotiations: their efficiency and their distributional effects. The Presidency can increase the efficiency of negotiations by identifying solutions that are beneficial to all parties involved. This is probably best referred to as the (pure) brokerage function of the Presidency. For the analysis below, it is helpful to distinguish further between, on the one hand, the delineation of the range of issues that are under negotiation and, on the other hand, the optimizing of the agreement within that range. In the practice of negotiation, initiatives of these two kinds are often mixed, most notably when new issues are brought into the negotiations to allow for pay-offs to those parties that have to make concessions on the initial issues. Analytically we may, however, separate the task of delineating the agenda of negotiations from the actual brokering of deals within the given range of issues. Furthermore, beyond serving the general good of brokering outcomes that are beneficial for all, the Presidency may also use its resources to skew the outcome towards certain interests rather than others; in particular it may try to bring about outcomes that are of particular interest to itself. In those cases, the Presidency thus acts as a promoter of specific interests rather than as a broker serving the general interest of the negotiations.

The empirical sections below examine whether the 2003–04 IGC confirms the self-clearing thesis or whether the two Presidencies have made a difference for each of the three Presidency roles: managing the agenda, brokering a unanimous deal and promoting (self-)interests. More specifically, these analyses will seek to identify whatever discretion the Presidencies enjoyed in exercising these roles and, having established that, demonstrate whether the Presidencies' choices have indeed been consequential for the outcome of the negotiations. The subsidiary research question concerns the impact of the European Convention and

its draft Constitutional Treaty on the negotiations. Here it is of particular interest whether the presence of the draft Constitutional Treaty has affected the space of discretion of the Presidency and thus its ability to steer the negotiations. Inevitably, addressing these questions involves the invocation of counterfactual reasoning to consider whether another Presidency would have acted differently or what would have happened in a 'normal' IGC without a preceding Convention (cf. Fearon 1991).

2. AGENDA MANAGEMENT: DEFINING THE SCOPE OF THE NEGOTIATIONS

As pointed out, the 2003–04 IGC differed from its predecessors as it proceeded to work on the basis of a complete legal text that had been prepared for it by the European Convention. Regardless of the satisfaction of the Conventioners with the document they had produced, they had no reason to expect it to be simply accepted by the member governments. The Laeken Declaration which had defined the Convention's mandate provided that its 'final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions' (European Council 2001). In line with this, when the European Council at Thessaloniki received the work of the Convention in June 2003, it affirmed: 'the text of the Draft Constitutional Treaty is a good basis for starting in the Intergovernmental Conference' (European Council 2003).

The comprehensive draft of the Convention confronted the Italian Presidency with two major choices before even opening the negotiations. First, there was the question whether negotiations would depart from the Treaty of Nice or from the Convention's draft. Formally, it was of course the case that as long as the IGC would not reach a conclusion by unanimity, the status quo established by the Treaty of Nice would obtain. At the same time, also given the active involvement of representatives of all Heads of Government, it was clear that much groundwork had been done in the Convention and that it would be ludicrous to engage with the negotiations from scratch. In particular the Convention's draft had the merit of providing a completely new format that integrated the existing treaties in a well-structured integral text. Thus, while there emerged a consensus on the *format* from which the IGC would depart, some governments (most notably the Spanish and the Polish) would insist that in terms of *substance* the negotiations were to depart from the agreements reached in Nice (cf. Palacio 2003).

The second, related question was to what extent the agenda of the IGC would again open up everything that had been discussed during the Convention. In principle, the real negotiations only started at the IGC and, hence, one could claim that any amendment that the Convention had made to the Treaty of Nice would need to be revisited. At the same time, there were many interests in limiting the negotiations. This of course applied to the Presidency itself, but also most national delegations were keen to limit negotiations to those issues on which they themselves retained reservations without opening up additional ones. However, as the reservations of different delegations involved

different kinds of issues, there was a real risk that by opening some, many others would follow.

The Italian agenda management strategy

The Italian government held outspoken preferences on the two agenda-setting choices: it sought to establish the Convention's draft as the basis of the negotiations and to restrain the scope of the issues to be reopened. These preferences were very much motivated by the Italians' firm commitment to finish the negotiations within the term of their Presidency, i.e. by December 2003 at the latest. Prime Minister Berlusconi appeared keen on the prospect of the Constitutional Treaty becoming the crown on his EU Presidency and being baptized as the second 'Treaty of Rome'. This procedural interest was reinforced by the fact that the Italians were basically quite satisfied with the Convention's draft as they saw it meeting their, generally integrationist, preferences.

The Italian government effectively exploited its position in the Presidency to impose its preferences on the negotiations. For a start, the Italians turned the conclusions of the Thessaloniki European Council into a benchmark by reading them in a distinctively affirmative way:

The Thessaloniki European Council welcomed the text of the draft Constitutional Treaty drawn up by the Convention and considered it to be a good basis for starting the IGC. The Presidency is therefore of the firm view that the *IGC should maintain the same level of ambition*, especially in institutional matters, and should aim to depart as little as possible from a balanced text which is the result of 18 months of intense negotiation.

(Presidency of the European Union 2003: 1; original emphasis)

Thus the Italians put the 'burden of argument' firmly on those who wanted to amend the Convention's draft. Following a round of consultations, they identified no more than four crucial issues 'which cause substantive difficulties for one or more delegation': Christian values in the preamble, the definition of qualified majority voting (QMV) in the Council, the scope of QMV, and the minimum threshold of European Parliament (EP) seats. Notably, whereas the latter three issues could well be regarded as make-or-break issues for one or more member states, the inclusion of Christian values on the list seemed above all motivated by the Italians' own preferences. Furthermore, the Presidency identified three issues 'which are not in principle called into question, but on which some further clarification is required in order to allow them to be applied in practice': the rotating presidency of Council formations, the Foreign Minister, and the modalities of the European security and defence policy (ESDP).

The Presidency adopted a very restrictive stance towards allowing any new issues to be added. As Foreign Minister Frattini put it:

We will adopt a 'constructive dissent' approach and not an amendatory one that, in fact, would just become a 'shopping list' of individual Member

requests. In practice, an issue will be discussed only if a counterproposal is presented and its ameliorative effect explained. The Italian Presidency will oppose steps backward to reopen institutional pillars.

(Italian Presidency 2003)

Thus the Italians' ambition to conclude the IGC as soon as possible led them to seal the IGC agenda in an almost extreme way. Most notably, the Presidency declined to reopen the issue of the composition of the European Commission, much to the dismay of many small and medium-sized member states that feared that the Convention's proposal would disadvantage them relative to the bigger member states. As the subsequent negotiations would show, most member states still had a number of other issues that they would like to see reconsidered.

To a large extent the Italian handling of the IGC in the subsequent months can be reconstructed as a backward struggle in which, one by one, new issues were allowed on the IGC agenda. Already by the official start of the negotiations in October, the Presidency had succumbed to allowing the composition of the Commission on the agenda as well as the revision clause of the Constitutional Treaty. Soon thereafter the Economic and Financial Affairs (Ecofin) Council had Italian Finance Minister Tremonti submit a list to his cabinet colleagues involving amendments to the Convention's proposals on issues like the Union's budget and the Stability and Growth Pact. Furthermore, an inventory by the Presidency yielded a list of 91 'non-institutional issues' (CIG 37/03) and about 15–20 areas in which one party or another would like the voting procedure (QMV or unanimity) to be reviewed (CIG 38/03).¹

By the eve of the December summit, the Italians' original agenda of four key issues had been extended with another 43 issues plus 11 minor ('miscellaneous') ones (CIG 60/03 ADD 1). As it turned out, the Italian Presidency was unable to broker a deal that could meet with the agreement of all member states. Most importantly, no reconciliation was found on the definition of QMV, as Spain and Poland insisted on some form of weighted voting as included in the Treaty of Nice. However, it was not just these member states that were intransigent. Much goes to suggest that the failure of the December summit was a direct reaction to the time pressure that had been at the basis of the Italian strategy (cf. Ludlow 2004; *Der Standard* 2003). Concluding the negotiations in December came for most delegations as 'too much too soon'. Many small and medium-sized states had resisted the Italian time pressure from the start. The Italians' reluctance to adopt issues on the IGC agenda had fuelled their resentment. Moreover, as the list of amendments had rapidly expanded in the final weeks, many of the compromises were still fresh and not fully thought through.

The Irish agenda management strategy

After the failure of the December summit, the incoming Irish Presidency adopted a very cautious approach. The Irish decided to suspend the (plenary) negotiations and to use the two and a half months before the spring European

Council as a ‘cooling down period’. Indeed, Prime Minister Ahern diagnosed the failure of the December summit as an issue of atmosphere:

The assessment was that the European Council was trying to do too much, too fast and it required to think out the issues more fully . . . If I, at any time in the next number of months, believe the atmosphere will present itself to finalize it, I’d take it. [But] that atmosphere is not there [now].
(cited by Handyside 2003)

In hindsight much of the Irish Presidency’s approach can be seen as an effort to create a favourable kind of atmosphere. The IGC was only formally reconvened by mid-May once the Presidency was confident that it would be able to conclude the negotiations.

The Irish handling of the IGC’s agenda built upon the agenda as it had been shaped under its Italian predecessor. Yet, being committed to meeting the wishes of the national delegations, the Irish were not ruling any issues out of order. As they insisted that ‘nothing is agreed until everything is agreed’ (CIG 70/04: 3), issues could in principle be put on the agenda as long as the negotiations were not yet concluded. Still, the work done by the Italians was taken as having delineated the agenda and thus it was up to the delegations to demonstrate that there were good reasons to add an issue or that the Italians had unduly kept their concerns off the agenda.

In the end, little more than 15 new issues appeared on the IGC’s agenda under the Irish Presidency and these were mostly of a secondary, technical nature. Building on the legacy of the Italians, the Irish resolved most of the issues concerning competences and the scope of QMV in April and May. Most work eventually focused on the three issues that had already been crucial at the December summit: the composition of the Commission, the minimum number of seats in the EP and, above all, the definition of QMV. Manoeuvring carefully, addressing each of these issues in turn and making extensive use of informal (bilateral) meetings, the Irish inched forward on a compromise on each of them. As the basic compromises gradually emerged, their final details were successfully settled at the June summit.

Was the IGC bound to deal with the issues that it eventually did? Or would the Constitutional Treaty have looked substantially different with other Presidencies adopting a different agenda management strategy? With the draft Constitutional Treaty of the Convention, the Italian Presidency basically faced an unprecedented situation. Practical considerations would probably have discouraged any state in the Presidency from reverting to the unwieldy Treaty of Nice as the basis of the negotiations. Still, some member states holding particular grudges against the Convention’s proposals (most notably Spain and Poland on the redefinition of QMV) might have been tempted to use this option as a threat to coerce some concessions from the start. Similarly, the Italians’ choice of a restrictive agenda strategy seems to be the natural one for

any Presidency interested in a swift conclusion of the negotiations. Still, few other Presidencies would probably have attached as much prestige to this as the Italians. Furthermore, most member states had considerably more reservations on the Convention's draft. Apart maybe from the other five founding member states, no state could have been expected to insist on a 'progressive stance' that required the level of ambition of the Convention's draft to be maintained. For the same reasons, other member states would probably have allowed for a larger IGC agenda from the start and would, by implication, also have adopted a more lenient attitude towards the addition of further issues.

Arguably, the Italians overdid their very strict agenda management strategy, with the consequence that it eventually backfired at the December summit in that it cost them the confidence of some states. Still, the failure to conclude the IGC should not distract from the results that the Italians did achieve. They firmly established the Convention's draft as the basis of negotiations. Obviously their attempt to contain the IGC's agenda was compromised, but access to the agenda remained strictly controlled and the total number of issues remained within manageable proportions. The failure to realize the initial ambition to conclude the IGC within its term in the Presidency may well have been the unavoidable price to pay. In any case, it is hard to see how a more hospitable agenda strategy would have secured a successful conclusion of the negotiations in December.

The big achievement of the Irish Presidency was its ability to change the atmosphere of the negotiations. It handled the cooling-down period very well, and even resisted accelerating and formalizing the negotiations once it had regained confidence at the spring European Council. Possibly another strategy would also have led to completion of the negotiations, but the Irish success in bringing the negotiations to an end is hard to beat. However, it is questionable whether, negotiation breakdowns apart, the outcome could have looked much different in substantive terms. Indeed as far as the IGC agenda was concerned, the Irish Presidency basically had its work cut out for it and enjoyed much less room for discretion than the Italians at the beginning of the negotiations.

Thus, much suggests that it was above all the Italian strategy that was instrumental in preserving most of the Convention's draft. Few, if any, other member states could have been expected to adopt a similarly restrictive approach. Other Presidencies would most likely have allowed a longer and more substantive agenda to develop with the consequence of the Convention's draft being renegotiated to a much greater extent (and possibly a much longer IGC). The Irish ability to conclude the negotiations thus owed a great deal to the restrictive strategy of its Italian predecessor.

3. BROKERAGE: FINDING EFFICIENT SOLUTIONS

As indicated in section 1, the self-clearing thesis also implies that the Presidency will have little leverage over distributing the benefits from co-operative arrangements. Instead liberal intergovernmentalism argues that the benefits will be

apportioned to the member states with the strongest reservations to the proposed agreements and the biggest stakes in maintaining the status quo (Moravcsik 1998: 60ff.). Reservations to the Convention's draft basically came in three kinds. First, some member states had concerns about specific extensions of the Union's competences or about the extension of QMV in certain domains. This kind of reservation probably found its most extensive expression in the position of the British government which defined a resolute set of 'red lines' in its White Paper on the IGC, most notably against extension of Union competences or majority voting in issues relating to economic governance, social policy, tax, the Union's own resources, criminal justice and the Common Foreign and Security Policy (CFSP) (Foreign Office 2003). Actually, in many of these areas the British government was anything but on its own. But few countries maintained a list of comparable length.

A second kind of reservation was held by most of the small and medium-sized member states, which feared that the large member states would come to dominate the European institutions. During the Convention these states had dedicated much effort to opposing the proposal of a permanent European Council President (cf. Magnette and Nicolaïdis 2005). While they grudgingly came to accept the Convention's compromise that limited the President's powers, their main preoccupation in the IGC was to ensure equal access of all member states (regardless of size) to the European Commission, even if its size was to be reduced below the total number of member states. Furthermore, especially among the smaller member states, there was strong opposition against the reduction of the minimum number of seats in the EP, which the Convention had put at four.

The fiercest resistance to the Convention's draft came from Spain and Poland. These two countries were unwilling to accept the Convention's proposal to have the qualified majority required for decision-making in the Council defined as a 'double-majority' involving 'the majority of member states, representing at least three fifths of the population of the Union'. Such a redefinition would undo the relatively large voting share that these two countries had secured in the Treaty of Nice.

Scope of EU competences and QMV

With regard to the British and others' sensitivities in competences and QMV, much work had already been done under the Italian Presidency. Here it was crucial that the Italians emphatically premised the negotiations on the basis of the Convention's draft rather than on the status quo established by the Treaty of Nice. Furthermore, rather than simply yielding to any objections, the Presidency sought to accommodate them on a step-by-step basis, putting forward carefully calibrated competence redefinitions that sought to meet the member states' concerns while leaving the Convention's intentions as much as possible intact. Typically, in the fields of social security and criminal policy the Presidency proposed a 'safety mechanism' that would allow a member

state to suspend the legislative procedure in the Council and put the issue before the European Council.

The Irish handling of these issues contrasts nicely with that of the Italians, even if by the time they came to the helm the main sensitivities had thus already been accommodated. With some distinct reservations of their own, the Irish yielded to a number of additional demands that the Italians had resisted, like the Scandinavian wish to reintroduce unanimity in the common commercial policy with regard to social, educational and health services. Also, typically, whereas the Italian Presidency had only proposed some minor adjustments to the Union's competence in tax, the Irish Presidency eventually allowed most of the relevant provisions to be scrapped altogether (CIG 81/04).

Composition of the Commission and the European Parliament

As we have seen, the Italian Presidency was very reluctant to allow the concerns of the small and medium-sized member states about the composition of the Commission and the EP on the IGC's agenda. Even when these issues formally entered the agenda, the Presidency refrained from submitting any concrete proposals. The most it did was to signal the possibilities of postponing the introduction of the reduced Commission from 2009 to 2014 and of a 'limited increase' in the Convention's threshold of four EP seats for the smallest states (CIG 60/03). Possibly, the Italians genuinely failed to recognize any amendment as an ameliorative alternative. Yet, another reason not to commit to any proposals was that these issues might be used in a package deal to placate Spain and Poland on the definition of QMV.

In its turn, the Irish Presidency decided to eschew any package deal and to address all issues individually. On the EP, the Irish Presidency basically took up the Italian suggestion of a small increase in the minimum number of seats which was eventually put at six (CIG 83/04: 10). As a consequence the maximum number of seats in the EP had to be raised from 736 to 750. However, to limit the upward pressure on the size of the EP, the provision was added that 'No member state shall be allocated more than ninety-six seats' (cf. the current share of Germany of 99 in an EP of 732 seats).

With regard to the Commission, the central challenge was to satisfy those (smaller) member states who resented the loss of a permanent Commissioner of their own nationality and still to allow for a reduction of the size of the College in due course (as was also already envisaged by the Treaty of Nice). The solution came in a number of components. First, there was the postponement, already suggested by the Italians, of the reduced Commission from 2009 to 2014. Second, the Irish scrapped the special category of non-voting (junior) Commissioners introduced by the Convention, as this distinction caused more confusion than that it contributed to a solution. Then, third, the key to the eventual solution was the Irish proposal to slightly raise the size of the College beyond the 15 members as proposed by the Convention. While the Irish initially suggested setting the number of Commissioners at 18, in

the final hours of the negotiations this was amended to ‘two thirds of the number of the member states’ but with the addition that this figure may be revised by the European Council acting unanimously (CIG 84/04).

QMV definition

As was clear from the start of the negotiations, the (re-)definition of QMV would be the most difficult issue to resolve. In essence the clash on this issue was between Spain and Poland wanting some form of weighted voting à la Nice to be maintained and Germany and France insisting on the double-majority formula put forward by the Convention. Even without the Italian insistence on the Convention’s draft, it was clear that the pressure was on Spain and Poland. Not only were their opponents the largest member states, they were also the two states that could claim historically to have been at the heart of the Union. Moreover, there were few signs that any other state was willing to defend the Nice formula, if only for its dramatic opacity.

The Italian Presidency kept its cards to its chest on this issue. In the weeks leading up to the December summit, options had been circulating in which Spain and Poland might be persuaded to a double-majority formula with an increase in the population threshold (from 60 per cent to 64 per cent, 66 per cent or even 70 per cent) and with side payments in the form of a second Commissioner or additional seats in the EP (cf. Bouilhet 2003; Yarnoz 2003). However, notwithstanding Prime Minister Berlusconi’s claim that he kept a solution up his sleeve (Tibuzzi 2003), it appears that by the time of the summit the Italians not only had no hunch about the shape of a possible compromise but were even without any clear perspective on how to proceed (cf. Ludlow 2004).

The Irish job may have been eased by the fact that the two firmest opponents of the Convention’s proposal on this issue (Spanish Prime Minister Aznar and Polish Prime Minister Miller) resigned from office in the spring. Still, the impact of these political changes should not be overrated, as these changes in personnel did not affect each country’s interest to secure as large a share as possible in the Council. The basis of the negotiations was always some form of double-majority formula building upon the Convention’s proposal to define the qualified majority as 50 per cent of the member states representing at least 60 per cent of the Union’s population. To accommodate Spain and Poland, it was proposed to raise the population key to 65 per cent, which was of particular value to them as it would allow them to form a blocking minority by coalescing with Germany and a third large country. However, as various small and medium-sized member states insisted on a balance between the share of states and the share of population, the Irish Presidency saw itself forced also to increase the member states’ key from 50 per cent to 55 per cent.² However, to balance out the effects for small states and to prevent blocking minorities from emerging too easily, it added that a blocking minority would need to involve at least four member states (CIG 82/04: 2).

Still, something more was needed than the mere recalibration of the percentages to bring Spain and Poland on board. The additional safeguard was found by harking back to the 'Ioannina compromise' of 1994. This compromise provides that if a proposal is opposed by a minority of member states marginally smaller than the minority required for blocking a decision under QMV, the states will do everything reasonably within their powers to find a solution that is acceptable to all (cf. CIG 82/04: 3). The Irish Presidency started floating this option in the course of the spring negotiations and tested it in bilateral contacts with the key states involved. One important condition that was added was that from 2014 onwards the Council might decide to repeal the Ioannina formula. The complete amendment package proposal on the QMV definition was only revealed at the June summit (CIG 83/04). There it still underwent some final fine-tuning (adding a minimum of 15 states for QMV and recalibrating the threshold for activating the Ioannina formula), but was eventually accepted without much further ado.

Did the Presidencies have any discretion in brokering unanimity on the Constitutional Treaty? Or did the negotiations simply follow a straightforward logic towards the lowest common denominator with those most resilient being compensated most? The most notable finding in this section is that the establishment of the Convention's draft Constitutional Treaty as negotiation text dramatically affected the fallback positions to which parties could appeal, even if formally these were still constituted by the provisions under the Treaty of Nice. Thus the agenda-management strategy adopted by the Italian Presidency led the negotiations away from their lowest common denominator logic and towards one in which compromises were constructed on the basis of the Convention draft.

Notably, Spain and Poland, having the gravest reservations about the agreement, received little in terms of compensation. Rather than receiving substantial side-payments, the two countries seem to have been bullied into accepting the double-majority formula. While the Irish Presidency seems to have identified those formulas that went farthest in *softening* the double-majority formula, it is hard to see them as genuinely *compensating* Spain and Poland.

With regard to the positions of the small and medium-sized states the assessment is somewhat mixed. While for a long time they seemed rather marginal to the whole negotiation process, eventually they had their way on the minimum number of EP seats, which came at a significant price for Germany (and other large member states) as the maximum number of seats was capped. On the Commission a very carefully calibrated compromise was reached. Again, however, while these concessions may have stretched the original proposal as far as possible, the small and medium-sized states never reached the point where they could reinstate the principle of one Commissioner per member state or claim substantial compensations. A further indication of their limited blocking power is that these same states had already shelved their opposition to the European Council President even before the negotiations had properly started.

Also for the member states whose reservations concentrated on the issues of scope of competences and QMV, it is hard to maintain that the veto threat brought them major concessions. The Italians' insistence on taking the Convention's draft as the basis of the negotiations meant that any attempts to roll back EU competences and QMV had to be conquered inch by inch. Here there is a notable contrast with the Irish, who seemed more open to simply conceding to any objections of this kind. They were, however, reluctant to renegotiate any compromises that had already been forged by the Italians.

The limited success of those countries opposing the proposed changes on the definition of QMV and on the Commission contradicts the liberal intergovernmentalist position which suggests a far greater potential to exploit the threat of a veto. This contradiction is explained by the presence of the Convention draft. Once the Italian Presidency succeeded in getting this draft accepted as the basis of the negotiations, the political costs for member states (both internationally as well as domestically) of actually exercising a veto became much higher. Arguably, this applied less to the British government which was successful in sustaining most of its 'red lines'. Given its size, its role in the Union and its domestic constituency, a British threat to veto might have had a greater credibility than that of Spain, Poland or any smaller member state. Still, the British concerns (or at least the ones they upheld after the Convention) were for many of secondary importance and allowed quite well for limited concessions.

4. INTEREST PROMOTION: DETERMINING THE DISTRIBUTIONAL EFFECTS

Neither the Italian nor the Irish government had acted as a major driver of the Convention's work. The Italian government played a relatively low-key role in the debates on the future of the EU, which reflected the various contradictory inclinations within the government (cf. Fabbri 2004). Still, as the Convention went along, the Italian members more and more came out on the 'federalist' side. With the Convention's draft Constitutional Treaty emerging as a rather ambitious, 'federalizing' text, the Italian government, along with the other founding member states, came to support its preservation. Here of course its substantial orientation very much coincided with its interest in making its Presidency a success and claiming the credit for the historical agreement on the Constitutional Treaty. Indeed, at times it appeared as if the Italians' embrace of the Convention's draft was in fact inspired by its instrumental role in making the Presidency a success.

That is not to say that the Italians had no wishes left with regard to the Constitutional Treaty. On some points the Italian government would have preferred an even more federalizing approach. Thus, during the Convention, its government representative Gianfranco Fini had advocated keeping the phrase 'an ever closer Union' in the Constitutional Treaty's Preamble. Another issue on which the Italians were keen to move further was the introduction of QMV in the Union's CFSP. Finally, the Italian government was among those who wanted

a stronger reference in the Constitutional Treaty to the Judaic-Christian tradition as underlying Europe's shared values.

Compared to the Italians, the Irish government was far less attached to the aspirations underlying the draft Constitutional Treaty. Especially after the traumatic experience with the referenda on the Treaty of Nice, the Irish stance on integration, although basically rather positive, was marked by a number of reservations in specific policy domains: ESDP, taxation, social security, justice and home affairs (cf. Laffan 2003: 13–14). The Irish government representative in the Convention, Dick Roche, had been sceptical of inserting any all too grand, too federalizing, language in the Constitutional Treaty. Together with other representatives from smaller member states, Roche staunchly opposed the proposal of a permanent European Council President and was keen to ensure absolute equal representation of all member states in the College of Commissioners. Further, the Irish were critical of further integration in socio-economic policy fields such as social policy or taxation. Given their status as a non-aligned state, the Irish also had a distinctive interest in the ESDP. Moreover, the Irish were reluctant to delegate any new powers to supranational institutions, such as the Commission or agencies like Europol and Eurojust, or to extend the powers of judicial oversight through a strong entrenchment of the EU Charter of Rights or the extension of the powers of the European Court of Justice. One final point of note is that the Irish were also among the member states who advocated an explicit reference to Europe's 'Christian heritage' in the Preamble to the Constitutional Treaty.

One may regard the Italians' success in establishing the Convention's draft as the basis of the negotiations as their main achievement in terms of self-interest promotion. Arguably, the Italian Presidency also used its very restrained agenda management and its insistence on 'progressive solutions' to keep certain issues low on the agenda, like the composition of the Commission and the EP and various issues that had been raised by the Ecofin Council. However, regardless of the Italians' broader achievements in restraining the IGC's agenda, on these specific policy preferences they eventually had to give way or to allow the Irish to do so. Also with regard to their own pet issues the Italians were distinctively unsuccessful in securing their preferences. While they boldly put the Preamble at the top of the IGC's agenda, they never came close to getting an explicit reference to Europe's 'Christian heritage' in. The other bold proposal that they made during their Presidency was to extend the use of QMV in the Union's foreign policy. However, this proposal was quickly removed by the Irish and was unlikely to survive any IGC, given the outspoken objections of the UK and other states.³

In turn, the Irish, notwithstanding their own Catholic inclinations, quickly decided to remove the issue of the Preamble from the centre of the negotiations. Similarly, while the Irish had in the past been among those advocating one Commissioner per member state, they refrained from promoting this idea in the IGC. The sensitivities surrounding the ESDP and its possible impingement on Irish neutrality were already resolved under the Italian

Presidency with close involvement of the Irish and other non-aligned EU member states.

Still, the Irish Presidency has a better claim to having brought specific provisions in line with its own interests, even though these involve mostly points of secondary importance. The 15 issues that only appeared on the IGC's agenda after the Irish Presidency took over included some items congenial to the Irish interests in limiting EU competences and the scope of QMV. Thus the Irish Presidency can be suspected of having been quite welcoming to the ('regressive') changes it got adopted in the fields of justice and home affairs (e.g. the amendments on Eurojust), economic policy (e.g. the insertion of price stability in the objectives of the Union and changes in the formulation of the Union's role in the co-ordination of economic policy), tax (the scrapping of the relevant provisions) and foreign policy (e.g. the role of the European Court of Justice in CFSP). Many of the Irish reservations coincided with the UK's 'red lines'. In practice then, rather than openly pressing their own concerns, the Irish could to a considerable extent hide behind the British position.

5. CONCLUSION

Considering the Presidencies' efforts in brokerage and (self-)interest promotion, the 2003–04 IGC negotiations lend much support to the self-clearing thesis put forward by the liberal intergovernmentalist theory of inter-state bargaining. While the IGC Presidencies may have facilitated the successful conclusion of the negotiations, it is not directly apparent that they have put their mark on the substance of the outcome. For one, the eventual compromises on the grand deals involving the EU institutions – the EP, the Commission, and, above all, the definition of QMV – very much reflect the underlying structure of member state interests. The main outlines of the proposals as favoured by most member states were preserved. The remaining negotiations were about defining the concessions that would placate reluctant members.

The Irish Presidency deserves the credit for having formulated these concessions in their concrete details, but it is very hard to see how a Presidency could have tackled the issues involved by way of a substantially different approach. This evaluation is reinforced by the fact that in the great majority of the 73 amendments to the Convention's text, the two Presidencies basically stuck to the same approach. What is more, apart from some minor points where the Irish could hide behind the back of the British, neither of the Presidencies succeeded in skewing the negotiations significantly in favour of their own interests. Thus the diversity among member state preferences and the demand for unanimity severely limited the room for the Presidency to come to any other solutions beyond the ones that were eventually established.

However, such an account looks mostly at the Presidencies' efforts in brokerage and interest promotion and plays down the preceding task of agenda management which had to take account of the presence of the draft Constitutional Treaty prepared by the European Convention. This unprecedented situation left it to the Presidency in office to navigate the void between the formal status quo

under the Treaty of Nice and the Convention's draft. Put in this position, the Italian Presidency opted for an extreme approach combining an insistence on the draft Constitutional Treaty with a very restrictive agenda management strategy. Counterfactually, few, if any, other member states would have combined such a lack of reservations over the draft Constitutional Treaty with such a pride in seeking to conclude the IGC within the term of the Presidency. Instead they probably would have taken a less ambitious and more lenient approach towards the IGC's time-frame and agenda.

Against (newspaper) accounts that have highlighted the dramatic failure of the December European Council, this article vindicates the Italian Presidency of the 2003–04 IGC. By adopting the agenda management strategy that it did, the Italian Presidency left its mark not only on the process of the negotiations but also on the substantial outcomes that eventually came about. With respect to the process, the Italians may have made a mistake in claiming that the IGC would be concluded within their term of Presidency. Yet, in a deeper sense, they may have been right in imposing that much pressure on the negotiations. Indeed, it is questionable whether with a less stringent opening leadership strategy, any successive Presidency would have concluded the IGC and would have secured so much of the Convention's draft.

What is more, if the Irish Presidency turned out to be the perfect midwife, the Italian Presidency left a marked imprint on the substance of the Constitutional Treaty. Its agenda management strategy salvaged more of the Convention's draft from the negotiations than would have otherwise been the case. Moreover, the establishment of the Convention's draft as the basis of the negotiations had the twin consequences of removing the Treaty of Nice status quo from the purview of the negotiations and raising the political costs for member states of actually exercising a veto. As was demonstrated in section 3, with the background against which deals had to be brokered thus changed, recalcitrant states failed to extract substantial side-payments and only saw the impact of the proposed changes softened by limited concessions.

The Convention's work allowed the EU Presidency to adopt an agenda management strategy that changed the nature of the negotiations and the power configuration of interests, which thus radically departed from those normally applying at IGCs. In fact, it seems rather unlikely that IGCs in the future will allow for a similar logic. Member states can be expected to be reluctant to a Convention hijacking their agenda. This reluctance has, moreover, been reinforced as they have found that the result to which they eventually signed up met with broad opposition among their constituencies in the subsequent ratification process.

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Notes

- 1 All official IGC documents are indicated by their official CIG number. They are available online at http://www.consilium.europa.eu/cms3_applications/Applications/igc/doc_register.asp?content=DOC&lang=EN&cmsid=900.
- 2 This follows the basic logic that the blocking power of small states increases the higher the required proportion of states is set, while an increase of the proportion of the population works mainly to the advantage of the more populated states.
- 3 This proposal did not survive the negotiations. It only leaves its trace in Annex 30 of CIG 81/04 that basically reproduces the original Convention text.

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